

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

10 ELROY W. BROWNING,)	CV F 05-0342 AWI LJO P
11 Plaintiff,)	ORDER DENYING MOTION FOR
12 v.)	RECONSIDERATION
13 JEANNE WOODFORD, et al.,)	[Document #37]
14 Defendants.)	
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16 Plaintiff is a state prisoner proceeding pro se and has filed a petition for writ of habeas
17 corpus pursuant to 42 U.S.C. § 1983. Pretrial matters have been referred to a United States
18 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

19 The Magistrate Judge denied Plaintiff's motion for the appointment of counsel. On
20 February 23, 2006, Plaintiff filed a motion for reconsideration of the Magistrate Judge's order
21 denying his request for counsel. Petitioner claims counsel is necessary.

22 Motions to reconsider are committed to the discretion of the trial court. Rodgers v. Watt,
23 722 F.2d 456, 460 (9th Cir. 1983) (en banc); Combs v. Nick Garin Trucking, 825 F.2d 437, 441
24 (D.C.Cir. 1987). To succeed, a party must set forth facts or law of a strongly convincing nature to
25 induce the court to reverse its prior decision. See, e.g., Kern-Tulare Water Dist. v. City of
26 Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal. 1986), *aff'd in part and rev'd in part on other*
27 *grounds*, 828 F.2d 514 (9th Cir. 1987). The court reviews a motion to reconsider a Magistrate
28 Judge's ruling under the "clearly erroneous or contrary to law" standard set forth in 28 U.S.C. §

1 636(b)(1)(A); Fed. R. Civ. P. 72(a); United States v. Raddatz, 447 U.S. 667, 673 (1980); Bhan v.
2 NME Hosp., Inc., 929 F.2d 1404, 1414 (9th Cir. 1991). A motion for reconsideration is not the
3 proper avenue for raising arguments and legal theories that could have been, but were not, raised
4 before the Magistrate Judge issued the order from which reconsideration is sought. In re Agric.
5 Research & Tech. Group, Inc., 916 F.2d 528, 542 (9th Cir.1990).

6 To succeed in his motion, Plaintiff must show that the Magistrate Judge's denial of his
7 request for counsel was clearly erroneous or contrary to law. There is no constitutional right to
8 counsel in a civil case. Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981). Title 28
9 U.S.C. § 1915 confers on a district court only the power to "request" that counsel represent a
10 litigant who is proceeding *is forma pauperis*. 28 U.S.C. § 1915(e)(1). This does not give the
11 courts the power to make "coercive appointments of counsel." Mallard v. United States Dist.
12 Court, 490 U.S. 296, 310 (1989). The court may ask counsel to represent an indigent litigant
13 under Section 1915 only in "exceptional circumstances," the determination of which requires an
14 evaluation of both (1) the likelihood of success on the merits and (2) the ability of the plaintiff to
15 articulate his claims *pro se* in light of the complexity of the legal issues involved. Rand v.
16 Rowland, 113 F.3d 1520, 1525 (9th Cir.1997) *withdrawn in part on other grounds on reh'g en*
17 *banc*, 154 F.3d 952 (9th Cir.1998) (*en banc*); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th
18 Cir.1986).

19 Plaintiff has failed to make a showing that statutory grounds exist that entitle Plaintiff to
20 reconsideration of the Magistrate Judge's order denying Plaintiff's motion for counsel. The
21 Magistrate Judge's order was not clear error. Plaintiff appears able to present his claims
22 adequately, and the issues at this stage of the case are issues of fact. Plaintiff's prior filings,
23 including the pretrial order, are comprehensive and focused. Plaintiff has filed numerous
24 motions throughout this action. Although Plaintiff's filings do not always achieve the quality of
25 papers that are usually prepared by lawyers, Plaintiff's motions have been articulate and
26 organized. Plaintiff is correct that he would be served by the assistance of counsel, and the court
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1 is not unsympathetic to Plaintiff's desire for counsel. However, the Ninth Circuit has recognized
2 that "any pro se litigant certainly would be better served with the assistance of counsel," and as
3 such the Plaintiff must "show that because of the complexity of the claims he was unable to
4 articulate his positions." Rand, 113 F.3d at 1525. Plaintiff has made no such showing. As
5 such, Plaintiff is not entitled to reconsideration of the Magistrate Judge's order.

6 Accordingly, the court ORDERS that Plaintiff's motion for reconsideration is DENIED.
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8 IT IS SO ORDERED.

9 **Dated:** August 24, 2006
10 0m8i78

/s/ Anthony W. Ishii
11 UNITED STATES DISTRICT JUDGE

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